



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**INTERIM ORDER**

**January 30, 2015 Government Records Council Meeting**

Harry B. Scheeler, Jr.  
Complainant

Complaint No. 2014-17

v.

Woodbine Board of Education (Cape May)  
Custodian of Record

At the January 30, 2015 public meeting, the Government Records Council ("Council") considered the November 10, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's failure to respond immediately in writing to the Complainant's OPRA request for contracts, bills, expenditures, and employee salary information results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The evidence in the record demonstrates that the Custodian unlawfully denied access to the salary information for seven (7) Woodbine Elementary School employees for the 2013-2014 academic year because the previously provided record did not contain the same. N.J.S.A. 47:1A-6. The Custodian shall provide the Complainant with the salary information for the following employees:
  - a. Jasmine Murray
  - b. Drew Albany
  - c. Sandy Germann
  - d. Jacqueline Anderson
  - e. Lisa Lombardo
  - f. Michelle Wendt
  - g. Alfonzo Toney
3. **The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**

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<sup>1</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 30<sup>th</sup> Day of January, 2015

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: February 3, 2015**

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<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 30, 2015 Council Meeting**

**Harry B. Scheeler, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-17**

**v.**

**Woodbine Board of Education<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** PDF<sup>3</sup> formatted copies of:<sup>4</sup>

1. “2013-2014 Budget
2. A list of all expenditures for the current year.
3. Current contact [sic] with school business administrator
4. Current contract with school superintendent
5. All legal bills submitted in 2013 please include complete detailed billing
6. Current contract for Child Study Team Services
7. List of ALL WES [Woodbine Elementary School] employees and salary information for 2013-2014 school year. Please include Board member salaries.
8. Financial Disclosure Statements for all Board members, Mrs. Towns and Mr. Parmelee”

**Custodian of Record:** Alan Parmelee

**Request Received by Custodian:** January 2, 2014<sup>5</sup>

**Response Made by Custodian:** January 8, 2014; January 9, 2014; January 10, 2014; January 13, 2014

**GRC Complaint Received:** January 15, 2014

**Background<sup>6</sup>**

**Request and Response:**

On January 2, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 8, 2014, four (4)

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Susan Hodges, Esq., of Archer & Greiner (Haddonfield, NJ).

<sup>3</sup> “Portable Document Format.”

<sup>4</sup> The Complainant requested additional records within his OPRA request, but they are not at issue in this matter.

<sup>5</sup> The Custodian claimed he received the ORPA request on January 6, 2014.

<sup>6</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

business days later,<sup>7</sup> the Custodian responded in writing, via e-mail, to each request item as follows:

1. “The 2013-2014 budget can be found on the WES web site at [URL omitted].
2. *All expenditures for the current year* – This request is overly broad and unclear. Currently, your request fails to identify with reasonable clarity the specific government records sought, as is required by Bent v. Stafford Police Department, 381 N.J. Super. [sic] 30, 37 (App. Div. 2005). At this time, we request clarification of your OPRA request. Please in writing and identify the specific government records sought so that we may process your request. Failure to provide written clarification of your request will result in the closure of this OPRA request.
3. The current contact [sic] with the School Business Administrator will be provided by January 30, 2014.
4. The current contact [sic] with the Superintendent will be provided by January 10, 2014.
5. *All legal bills submitted for payment in 2013* – Currently, your request fails to identify with reasonable clarity the specific government records sought, as is required by Bent v. Stafford Police Department, 381 N.J. Super. [sic] 30, 37 (App. Div. 2005). At this time, we request clarification of your OPRA request. Please [sic] in writing and identify the specific government records sought so that we may process your request. Failure to provide written clarification of your request will result in the closure of this OPRA request.
6. Current contract for the Child Study Team will be provided by January 10, 2014.
7. *List of all WES employees and salary information* – please see Board minutes of May 13, 2014 [sic] on the WES web site – [URL omitted].
8. *Financial Disclosure Statements* – Financial Disclosures are done electronically now on the NJ Ethics Commission website at [URL omitted].”

(Emphasis added). That same day, the Complainant responded to the Custodian via e-mail, objecting to the Custodian’s reference to websites as sufficient responses to his request items. The Complainant also objected to the need for any clarification of his request.

On January 9, 2014, the Custodian provided the Complainant with responsive records to request Item Nos. 3-8. On January 10, 2014, the Custodian provided responsive records to request Item No. 1. After receiving another e-mail from the Complainant, the Custodian provided responsive records to Item No. 2 on January 13, 2014.

#### Denial of Access Complaint:

On January 15, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian violated N.J.S.A. 47:1A-5(e) by not providing immediate access to the above-mentioned records.

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<sup>7</sup> The GRC takes judicial notice that on January 3, 2014, Woodbine Board of Education was closed due to a snowstorm. Therefore January 3, 2014 is not counted as a business day.

On January 28, 2014, the Complainant submitted an Amended Denial of Access Complaint to the GRC. The Complainant stated that he was denied access to request Item No. 7, arguing that the record received from the Custodian was insufficient and missing the salary information of a number of Woodbine Elementary School (“WES”) employees.

#### Statement of Information:

On January 30, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he did not receive the Complainant’s OPRA request until January 6, 2014, asserting that he was on vacation on January 2, 2014, and the school district was closed on January 3, 2014 due to a snowstorm.

The Custodian certified that although he could have responded on January 6, 2014 via e-mail, he elected not to in favor of verifying the availability of the immediate access records. After objections from the Complainant, the Custodian certified that he produced the requested records on January 9, 10, and 13, 2014. The Custodian argued that considering the Complainant had submitted several subsequent OPRA requests, it was difficult to expeditiously fulfill the current request due to the limited resources available.

### Analysis

#### Timeliness

OPRA provides that:

*“Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.”*

N.J.S.A. 47:1A-5(e) (emphasis added).

Each request item at issue is specifically classified under OPRA as “immediate access” records pursuant to N.J.S.A. 47:1A-5(e). In Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that “immediate access language of OPRA (N.J.S.A. 47:1A-5(e)) suggests that the Custodian was still obligated to immediately notify the Complainant[.]” Inasmuch that OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are sought, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond or seek clarification of the request.

The evidence of record indicates that the Custodian did not conform to his statutory obligation under OPRA to respond immediately to the Complainant’s OPRA request in writing granting access, denying access, or requesting an extension of time to respond. Instead, the Custodian elected to respond to the Complainant’s OPRA request on the fourth (4<sup>th</sup>) business day after receipt, while admitting he could have responded on the second (2<sup>nd</sup>) business day. Thus, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(e).

Therefore, the Custodian's failure to respond immediately in writing to the Complainant's OPRA request for contracts, bills, expenditures, and employee salary information results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See Herron, GRC No. 2006-178.

### **Unlawful Denial of Access**

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

On January 28, 2014, the Complainant submitted an Amended Denial of Access Complaint, stating that the Custodian's response to request Item No. 7 was incomplete. The Complainant requested all WES employee and salary information for the 2013-2014 academic year. In response, the Custodian provided the May 13, 2013 Woodbine Board of Education ("Woodbine BOE") meeting minutes ("minutes") via e-mail on January 9, 2014. The minutes contained a list of Tenured, Non-Tenured, and Support personnel with their respective salaries approved by Woodbine BOE for the 2013-2014 academic year.

The Complainant claimed that there are seven (7) employees identified on the Woodbine BOE's website that are not listed in the minutes, and provided a print out of WES's staff directory as evidence. After review of the Complainant's print out and the previously produced minutes, there are seven (7) employees listed as WES staff whose salary information are not identified in the minutes.

The evidence in the record demonstrates that the Custodian unlawfully denied access to the salary information for seven (7) WES employees for the 2013-2014 academic year, because the previously provided record did not contain the same. N.J.S.A. 47:1A-6. The Custodian shall provide the Complainant with the salary information for the following employees:

1. Jasmine Murray
2. Drew Albany
3. Sandy Germann
4. Jacqueline Anderson
5. Lisa Lombardo
6. Michelle Wendt
7. Alfonzo Toney

### **Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond immediately in writing to the Complainant's OPRA request for contracts, bills, expenditures, and employee salary information results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007).
2. The evidence in the record demonstrates that the Custodian unlawfully denied access to the salary information for seven (7) Woodbine Elementary School employees for the 2013-2014 academic year because the previously provided record did not contain the same. N.J.S.A. 47:1A-6. The Custodian shall provide the Complainant with the salary information for the following employees:
  - a. Jasmine Murray
  - b. Drew Albany
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3. **The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>8</sup> to the Executive Director.<sup>9</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado, Esq.  
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.  
Deputy Executive Director

November 10, 2014<sup>10</sup>

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<sup>8</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>9</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

<sup>10</sup> This complaint was prepared for adjudication at the Council's November 18, 2014 and December 16, 2014 meeting, but could not be adjudicated due to lack of quorum.